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KEALI'I S. LOPEZ  
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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON TRANSPORTATION

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Wednesday, February 8, 2012  
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 2309, RELATING TO PERSONAL INFORMATION.**

THE HONORABLE JOSEPH M. SOUKI, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs appreciates the opportunity to testify on H.B. No. 2309, Relating to Personal Information. My name is Bruce Kim, Executive Director of the Office of Consumer Protection ("OCP"). OCP supports the intent and purposes of the bill and offers comments in support of the proposition that personal information should be protected.

The bill would add a new section to HRS Chap. 487R Destruction of Personal Information Records to make it unlawful to scan the machine readable zone of an individual's certificate of identification or driver's license to use or retain any information contained therein except in five (5) enumerated circumstances.

OCP suggests that this new language may be more appropriately located in Chap. 487N Security Breach of Personal Information or in the Hawaii Penal Code, rather than in Chap. 487R Destruction of Personal Property.

Identity theft is a serious crime with lasting negative repercussions on the life of the person whose identity is stolen. A frequent source of identity theft is information contained on an individual's certificate of identification or driver's license. The widespread use of such personal identification numbers has made it relatively easy for thieves to gain access to sensitive information of innocent victims. Minimizing its use is important. Limiting the use of certificate of identification or driver's license information promotes the privacy interests of individuals and eliminates a potential source of information for identity thieves.

OCP subscribes to the proposition that any exception to the general rule against the unauthorized use or dissemination of personal identification numbers must be extremely limited in scope and nature. H.B. No. 2309 attempts to do so by setting forth five (5) limited situations where scanned images of an individual's certificate of identification or driver's license may be used or retained. That being said, the statute allows for scanning of a certificate of identification or driver's license to "verify the age of

the individual who possesses the certificate or identification or driver's license" or to "verify the authenticity of the certificate of identification or driver's license". It is unclear why a person would need to scan a certificate of identification or driver's license in either circumstance if the holder of such documents presents the requested document at the time of the subject transaction. OCP is concerned that the bill as drafted appears to give a business unqualified authority to scan personal identification documents even if there is a less intrusive means to verify the age or identity of the customer.

It should be noted that Chaps. 487J, 487N and 487R regulate the use, security breach and destruction of protected personal identification information by businesses. OCP takes no position as to the criminal sanctions set forth on Page 2, Lines 7-11 except to note that this bill references conduct by a "person" and Chapters 487J, 487N and 487R all regulate conduct by a business.

Thank you for the opportunity to testify on H.B. No. 2309. I would be happy to answer any questions the committees may have.



Representative Joseph Souki, Chair  
Representative Linda Ichiyama, Vice Chair  
Committee on Transportation  
State Capitol, Honolulu, Hawaii 96813

HEARING      Wednesday, February 08, 2012  
                    9:00 am  
                    Conference Room 309

**RE:    HB2309, Relating to Personal Information**

Chair Souki, Vice Chair Ichiyama, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to supporting the retail industry and business in general in Hawaii.

**RMH supports HB2309** which allows the scanning and retention of personal information contained in a state identification card or driver's license for only limited purposes.

Respecting and protecting our consumers' personal information are priority issues for retailers: We must maintain their privacy while at the same time shield them from fraudulent activity. The challenge is balancing this responsibility against the multitude of regulations that require us to collect personal information. The permitted exceptions in SB2419 for the most part should facilitate our balancing the needs of business with those of our customers.

We respectfully request one amendment to insert in part (a), subsection (4), line 18: "... provided that only the name, identification number, address, phone number, date of birth and expiration date from the certificate ...". Our experience with identity thieves and fraudulent check writers is that this additional information provides greater security for our customers.

Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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**TO:** Representative Joseph M. Souki  
Chair, Committee on Transportation  
*Via Email: TRNtestimony@Capitol.hawaii.gov*

**FROM:** Gary M. Slovin

**DATE:** February 7, 2012

**RE:** **H.B. 2309 – Relating to Personal Information**  
**Hearing Date: Wednesday, February 8, 2012 at 9:00 a.m.**  
**Conference Room 309**

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Dear Chair Souki and Members of the Committee on Transportation:

I am Gary Slovin submitting on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is the international trade association that represents more than 400 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment reporting, tenant screening and collection services.

CDIA submits comments regarding H.B. 2309, which allows the scanning and retention of personal information contained in a state identification card or driver's license for only limited purposes.

CDIA appreciates that this bill is intended to address the potential illegitimate use of information contained in drivers licenses and state identification cards, but that the information in such licenses or identifications could still be used for the purposes of screening identification when verifying checks.

Many states have updated their statutes to allow for scanning and storage of driver's license information because, over the last decade, more sophisticated technology has been developed to protect the safety of the data compiled. Federal law also places

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limitations on what personal identifiable information can be used and how it can be used by certain entities.<sup>1</sup>

We believe that it is important to continue to allow the use of driver's license information through scanning technology. Scanning decreases manual errors, which can be problematic in the check verification process. Manual entry of licenses also backs up lines at the point of sale, which frustrates both consumers and clerks and makes purchase processes less efficient. Allowing scanning also reduces fraud, because, while it is easy to create a fake ID with numbers on a card, it is far more difficult to create a fake ID with numbers embedded in a magnetic stripe.

Moreover, capturing the information contained in the driver's license or identification assists in the collections and enforcement process. It is to everyone's benefit that merchants be able to collect on bad checks -- the harder it is to collect on bad checks, the less likely merchants are to continue accepting checks. This would tend to impact the youngest, oldest, and least well-off consumers.

CDIA recommends that, if the Committee is inclined to move this measure, the following amendments be made to Section 487R for clarity:

(4) To transmit information to a ~~check service~~ company for the purpose of approving negotiable instruments, electronic funds transfers, or ~~similar~~ other methods of payments; ~~provided that only the name, and identification number from the certificate of identification or driver's license may be used or retained by the check service company; or~~

(5) To collect or disclose personal information ~~that is required in order to report, investigate, or prevent fraud, abuse, or material misrepresentation, or to enforce a transaction.~~

CDIA suggests these amendments in order to make it clear that: 1) a company that approves negotiable instruments, electronic funds transfers, or other methods of payments may store all of the information from a driver's license or identification card, and 2) that the scanning of a driver's license or identification card may be used for the purpose of enforcing transactions.

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<sup>1</sup> Check services companies who scan the information are governed by two federal privacy laws, the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act for the express reasons of protecting against actual or potential fraud or effecting transactions.

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We respectfully request your consideration of the foregoing, and welcome any questions you have regarding our proposed amendments. Thank you very much for the opportunity to submit testimony.



Committee: Committee on Transportation  
Hearing Date/Time: Wednesday, February 8, 2012, 9:00 a.m.  
Place: Room 309  
Re: Testimony of the ACLU of Hawaii in Strong Support of H.B. 2309,  
Relating to Personal Information

Dear Chair Souki and Members of the Committee on Transportation:

The ACLU of Hawaii writes in support of H.B. 2309, which specifies the limited purposes for which a private business would be allowed to scan and retain personal information contained in a state identification card or driver's license.

Private businesses have adopted a practice of scanning the bar codes on customer driver's licenses for all manner of purchases. Bar code scanning may be required by company policy for purchases of alcohol and other age-related transactions, including Nicorette gum, mature video games, and cold medicines.

This bar code scanning practice raises serious privacy concerns: Hawaii driver's licenses contain bar codes with significant personal information, including name, address, date of birth, hair color, eye color, height, weight, gender, license expiration date, organ donor status, driver's license number, fingerprint, medical indicators and driver classification code.

- By scanning this information for each customer, private businesses are able to keep and use this data for any purpose. There are no regulations on what they may do with this information.
- Other states, including California, Texas and Nebraska have enacted laws to strictly limit the retention and use of driver's license information by businesses and to protect driver's license privacy.

As more personal information is amassed in more databases, the likelihood increases that the information will be misused or stolen, leading to risks of identity theft. Individuals can't protect the accuracy or distribution of their personal information when it is held by others. Driver's license data should only be retained by business entities where otherwise required by law. Transmission of driver's license data to third parties should be limited to situations where there is a clear need.

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Hon. Rep. Souki, Chair, TRN Committee  
and Members Thereof  
February 8, 2012  
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In Hawaii, we need a law that prohibits businesses and other private entities from swiping driver's licenses or identification cards to collect personal information which is then used for marketing purposes. H.B. 2309 will help to protect our privacy by reducing this surreptitious way of copying, storing and using our personal information.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

Laurie A. Temple  
Staff Attorney

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February 8, 2012

The Honorable Rep. Joseph Souki  
Chair, Committee on Transportation

*Re: Testimony on House Bill 2309  
Hearing before the House Committee on Transportation  
9 a.m., Conference Room 309*

Rep. Souki and Members of the Committees:

Thank you for this opportunity to express AT&T's position on House Bill 2309. While we respect the bill sponsor's intentions, AT&T has concerns about how the current proposal has potentially negative effects on our customers and the transactional processes at our retail establishments.

Scanning a certificate of identification or a driver's license for purposes of credit checks is a common practice for many types of retail establishments. Scanners are helpful because they reduce human errors while procuring personal information and also ensure the customer isn't required to orally share personal information in front of other consumers. This provides many customers the added benefit of privacy and serves as a tool against fraud prevention. Additionally, our goal is to make the credit check process as expedient as possible and scanners accelerate the process and help deliver a positive customer experience. AT&T has devised and deployed scanners throughout our retail stores, and our employees have been carefully trained on proper use of the technology.

AT&T takes the procurement, retention and purging of customer information with absolute care. With the exception of name and address, which is retained for billing purposes only, all other highly sensitive personal information is electronically purged from our database after taking fraud prevention measures.

Although we may not be the target of this proposal, we hope you can see how the new statute jeopardizes our retail business processes. Therefore, AT&T proposes the bill be amended to include a minor exemption that would allow retention for the purposes of establishing or maintaining a contract with the consumer. Here is the specific language:

(6) for the purpose of establishing or maintaining a contract between the person and another individual.

I thank you for your time and consideration on this matter and look forward to additional dialogue on this issue.

Respectfully Submitted,

Dan Youmans, AT&T

February 7, 2012

**Testimony with CONCERNS**  
**about HB2309**

RELATING TO PERSONAL INFORMATION

Presented to the House Committee on Transportation

At the public hearing 9:00 a.m., Wednesday, February 8, 2012  
in Conference Room 309, Hawaii State Capitol  
Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association  
Hawaii's Franchised New Car Dealers

Chair Souki, Vice Chair Ichiyama and members of the committee,

I'm David Rolf, representing Hawaii's franchised new car dealers.

**Scanning machines can improve efficiencies in data transfer-- providing a valuable service to customers in reducing their wait times at dealerships and valuable efficiencies to dealerships in improving accuracy of data previously copied by hand.**

HADA believes that paragraph 487R(a)(5) of this proposed measure is intended to exempt entities like auto dealerships which use these scanning devices "to collect or disclose personal information that is required to report, investigate, or prevent fraud, abuse or material misrepresentation."

Dealers scan driver's licenses before allowing a test drive. Dealers also record driver's license information to confirm identification of individuals seeking loans to purchase a vehicle.

HADA asks that the scanning of driver's licenses at dealerships for such purposes be considered exempted from the scanning prohibition in this bill, and that a notation of such be included in the committee report if this bill is moved forward.

Respectfully submitted,

David H. Rolf

For the members of the Hawaii Automobile Dealers Association

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**Testimony of Joyce Masamitsu  
Associate Director of Public Policy for Verizon  
Before the  
Committee on Transportation  
On H.B. 2309  
February 8, 2012**

The Honorable Joseph m. Souki  
Chairman  
Committee on Transportation  
Hawaii House of Representatives

**Re: *H.B. 2309 -- Driver's Licenses***

Chairman Souki and Members of the Committee:

On behalf of Verizon, I am testifying in opposition to H.B. 2309 as currently constituted, and urge the Committee to defeat this legislation.

Verizon is proud of its service to our customers in Hawaii, where we have invested nearly \$300 million in the network in this State since 2000, and where we have over 300,000 customers. Our main concern is to be able to maintain our existing business operations, and we have concerns that this legislation as constituted would disrupt our ability to swipe a driver's license when setting up service, and we use licenses to help identify and protect our customers from potential fraudulent behavior. Our only interest in using license is for verification of our customers.

According to our Retail Operations Team, the machine-readable strip on a customer's driver's license is scanned, which we refer to as "swiping," when a customer first initiates service in a store, and as part of subsequent transactions after the customer's account has been established. For new customers, the driver's license, or other state-issued identification, is swiped so that information can be transmitted for credit check processing. The information from the same swipe populates a new customer record in our billing system which is the basis for the customer's account. Later, when the customer comes into a store to perform a transaction such as an upgrade, since sales representatives are required to verify the customer's identity with a picture ID, the Rep can also swipe the DL in order to update customer information into the account.

The ability to swipe a driver's license versus manually entering the information is a convenience for both our business and the customer. We need to get certain information from the customer, particularly for a credit check. So, whether we swipe the driver's license, or manually enter information from the driver's license, a gathering of the information is required – it's just a matter of how long it will take and how accurate it will be. Manual entry takes longer and is more likely to be inaccurate. We only retain information from the driver's license that we need in order to maintain the account.

The ability to swipe a driver's license allows us to service our customers in the most efficient manner. Since we use the driver's license to verify ID and need to populate our system with information that is required to maintain a customer's account, we are able to streamline processes by scanning a driver's license rather than obtaining information manually. Impeding our ability to do this will negatively impact customers by causing longer wait times and increasing the risk of information being entered into the system incorrectly. For example, an incorrect billing address could result in a customer not receiving a bill.

We only gather information from the driver's license scan that we need to maintain the account - so we are going to get the information regardless of whether or not the information is obtained from a driver's license swipe. But we need the ability to swipe the license for legitimate business purposes and to also verify the customer's identity to protect their account as well.

We are concerned that S.B. 2419 disrupts our ability to pursue these legitimate practices, and urge that the bill be defeated or amended to allow legitimate business practices such as swiping to be exempted.

We thank you for the opportunity to present our concerns in opposition to the bill.

Thank You.